No. 3830

United States

Circuit Court of Appeals

For the Ninth Circuit.

14

In the Matter of GEORGE R. JESSEE, Bankrupt.

J. F. HERRICK, as Trustee of the Estate of GEORGE R. JESSEE, Bankrupt,
Petitioner and Appellant,
vs.
FIRST NATIONAL BANK OF COLVILLE, WASHINGTON, a Corporation,
Respondent and Appellee.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Eastern District of Washington, Northern Division and Upon Appeal from Said District Court.

FILED
MAR 4 - 1922
F. D. MONCKTON,
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No. 3830

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Circuit Court of Appeals

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In the Matter of GEORGE R. JESSEE, Bankrupt.

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Petitioner,

vs.

FIRST NATIONAL BANK OF COLVILLE, WASHINGTON, a Corporation,

Respondent.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Eastern District of Washington, Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals for the Ninth Circuit.

IN BANKRUPTCY—No. 3532.

In the Matter of GEORGE R. JESSEE, Bankrupt.
J. F. HERRICK, as Trustee in Bankruptcy of GEORGE R. JESSEE, Bankrupt,

Appellant,

vs.

FIRST NATIONAL BANK OF COLVILLE, WASHINGTON, a Corporation,

Appellee.

Petition to Revise in Matter of Law.

To the Honorable Judges of the Circuit Court of Appeals of the Ninth Circuit of the United States:

Your petitioner respectfully shows.

I.

That he is the duly qualified and acting Trustee of the Estate of George R. Jessee, Bankrupt, who was so adjudged a bankrupt in the District Court of the United States, for the Eastern District of Washington, Northern Division, on the 14th day of January, 1921.

II.

That after such adjudication, the following proceedings were had in the case of the said bankrupt:

The trustee filed a petition to set aside a certain chattel mortgage given by the bankrupt to the First National Bank of Colville, Washington, for the sum of Thirty-six Hundred and Seventeen (3617.00)

Dollars, covering two Elcar automobiles. That the facts are undisputed, and are as follows:

On November 17th, 1921, the bankrupt gave to the First National Bank of Colville a chattel mortgage for Thirty-six Hundred and Seventeen Dollars ($3617.00), covering two automobiles. At that time the First National Bank of Colville advanced the full purchase price of the automobiles in question and the mortgage was given for the purpose of securing the purchase price thereof. On the 18th day of November, 1920, the mortgage was filed in the office of the Auditor of Stevens County, Washington, in which County the automobiles were kept.

The notary did not sign the affidavit of good faith. He did, however, attach his seal opposite the place where his signature should have been. The affidavit of good faith is followed on the instrument, by the acknowledgment and the acknowledgment is in proper form. Undisputed oral testimony was admitted over objection, that the mortgagor (the bankrupt herein) swore to the affidavit of good faith.

The mortgage was a single sheet of paper, with the blank form for the affidavit and acknowledgment on the back thereof.

The sole question involved is, whether or not the mortgage is valid as against the Trustee.

III.

That on the first day of September, 1921, an order was made by Sidney H. Wentworth, Esq., Referee in Bankruptcy to whom the above-entitled

matter has been referred, adjudging said chattel mortgage to be void as against the Trustee, and on the 19th day of January, 1922, an order was granted and entered by the Hon. Frank H. Rudkin, District Judge of the United States for the Eastern District of Washington, Northern Division, reversing the order of the Referee and adjudging said chattel mortgage to be valid as against the Trustee, a copy of which order is hereto annexed.

IV.

That said order was erroneous in the matter of law, in that the Court erred as follows:

1. In reversing the order of the Referee made and entered adjudging the mortgage of the First National Bank of Colville void as against the Trustee.

2. In refusing to affirm the order of the Referee made and entered, adjudging the mortgage of the First National Bank of Colville to be void as against the Trustee.

3. In adjudging the chattel mortgage to the the First National Bank of Colville to be valid as against the Trustee.

4. In failing to adjudge the chattel mortgage of the First National Bank of Colville void as against the Trustee.

5. In reversing the order of the Referee ordering the return of the property covered by said chattel mortgage, or the proceeds thereof, to the Trustee.

6. In failing to affirm the order of the Referee ordering the return of the property

covered by said chattel mortgage to the Trustee.

7. In denying that the Trustee is entitled to the property covered by said chattel mortgage, free and clear of the lien thereof.

WHEREFORE, your petitioner, feeling aggrieved because of such order, asks that the same may be revised in the matter of law by your Honorable Court, as provided in Section 24–b of the Bankruptcy Law of 1898, as amended, and the rules and practice in such case provided.

J. F. HERRICK,
Petitioner.
FABIAN B. DODDS,
Attorney for Petitioner.

State of Washington,
County of Spokane,—ss.

J. F. Herrick, being first duly sworn, deposes and upon his oath says: I am the Trustee above named; I have read the foregoing petition, and the statement of facts therein contained is true, according to the best of my knowledge, information and belief.

J. F. HERRICK.

Subscribed and sworn to before me this 19th day of January, 1922.

[Seal] FABIAN B. DODDS,
Notary Public for the State of Washington, Residing at Spokane.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. ——.

In the Matter of GEORGE R. JESSEE, Bankrupt.

ORDER.

This cause having heretofore come on for hearing before Hon. Frank H. Rudkin, Judge of the above-entitled Court, on the petition of the First National Bank of Colville, for a writ of review from the order of Sidney H. Wentworth, Esquire, Referee in Bankruptcy, adjudicating void a certain mortgage on two automobiles given by the bankrupt to the First National Bank of Colville, Washington, on November 17th, 1920, the mortgagee being represented by L. B. Donley and Allen, Winston & Allen, its attorneys, and the Trustee being represented by Messrs. Dodds & Dodds, his attorneys, and the Court having filed his opinion herein, it is by the Court

ORDERED, ADJUDGED and DECREED that the said order of the Referee be and the same is hereby reversed and the said mortgage of the bank be and the same is hereby declared to be valid. Exception of Trustee allowed.

Dated at Spokane, Washington, this 19th day of January, 1922.

FRANK H. RUDKIN,
District Judge.

[Endorsed]: No. 3830. United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of George R. Jessee, Bankrupt. Petition to Revise in the Matter of Law. Filed Jan. 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Due service of the within petition acknowledged this 19th day of December, 1921.

L. B. DONLEY,
ALLEN, WINSTON & ALLEN,
Attorneys for First National Bank of Colville.

United States Circuit Court of Appeals for the Ninth Circuit.

IN BANKRUPTCY—No. 3532.

In the Matter of GEORGE R. JESSEE, Bankrupt.
J. F. HERRICK, as Trustee in Bankruptcy of GEORGE R. JESSEE, Bankrupt,
Appellant,

vs.

FIRST NATIONAL BANK OF COLVILLE, WASHINGTON, a Corporation,
Appellee.

Stipulation.

IT IS HEREBY STIPULATED by and between the parties hereto that the record made up on the appeal in the above-entitled matter may be used and become a part of the proceedings under

the petition to revise in the matter of law, filed herein;

In case the Circuit Court of Appeals, for the Ninth Circuit should hold that the remedy is not by appeal but by petition to revise in the matter of law.

Dated this 19th day of January, A. D. 1922.

FABIAN B. DODDS,
Attorney for Appellant.

L. B. DONLEY,
ALLEN, WINSTON & ALLEN,
Attorneys for Appellee.

[Endorsed]: No. 3830. United States Circuit Court of Appeals for the Ninth Circuit. In the matter of George R. Jessee, Bankrupt. Stipulation. Filed Jan. 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3830.

In the Matter of GEORGE R. JESSEE, Bankrupt.
J. F. HERRICK, as Trustee in Bankruptcy of GEORGE R. JESSEE, Bankrupt,
Appellant,

vs.

FIRST NATIONAL BANK OF COLVILLE, WASHINGTON, a Corporation,
Appellee.

Notice of Filing Petition for Revision, etc.

To the First National Bank of Colville, Washington, and to Allen, Winston & Allen, and L. B. Donley, of Colville, Washington, Its Attorneys.

You and each of you will please take notice that on the 23d day of January, A. D. 1922, a certain petition for revision under Section 24B of the Bankruptcy Act of Congress approved July 1, 1898, of certain proceedings of the District Court of the United States for the Eastern District of Washington, Northern Division, (a certified copy of which petition accompanies this notice, and is served upon you herewith), was duly filed in the said Circuit Court of Appeals; and the above-mentioned matter is now pending in said court and, pursuant to the practice and agreeably to the provisions of Rules 35 and 36 will be regularly assigned for hearing or submission during the May session of said court to be held in the city of San Francisco in the State of California commencing on May 1, 1922.

WITNESS, THE HONORABLE THE JUDGES of the United States Circuit Court of Appeals for the Ninth Circuit, and the seal of said Circuit Court of Appeals at the city of San Francisco in the State of California, this 23d day of January, A. D. 1922.

[Seal] F. D. MONCKTON,
Clerk,
By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: No. 3830. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of George R. Jessee, Bankrupt. J. F. Herrick, as Trustee in Bankruptcy of George R. Jessee, Bankrupt, Appellant, vs. First National Bank of Colville, Washington, a Corporation, Appellee. Notice of Filing Petition for Revision, etc. Filed Feb. 11, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Service acknowledged this 8th day of February, 1922.

ALLEN, WINSTON & ALLEN,
L. B. DONLEY,
Attorneys for 1st Nat'l Bank of Colville.

No. 3830

United States

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of GEORGE R. JESSEE, Bankrupt,

J. F. HERRICK, as Trustee of the Estate of GEORGE R. JESSEE, Bankrupt,

Appellant,

vs.

FIRST NATIONAL BANK OF COLVILLE, WASHINGTON, a Corporation,

Appellee,

Transcript of Record.

Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Names and Addresses of Attorneys of Record.

L. B. DONLEY, Colville, Washington, ALLEN, WINSTON & ALLEN, Paulsen Bldg., Spokane, Washington,

Attorneys for The First National Bank of Colville.

FABIAN B. DODDS, Old National Bank Bldg., Spokane, Washington,

Attorney for the Trustee in Bankruptcy.

[1*]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Stipulation and Agreed Statement.

In conformity with Equity Rule No. 77, the following is a statement of the case and shall be treated as superseding for the purposes of the appeal, all parts of the record other than the decree from which the appeal is taken, to wit:

On November 17th, 1921, the bankrupt gave to the First National Bank of Colville a chattel mortgage for Thirty-six Hundred and Seventeen Dollars ($3617.00), covering two automobiles. At that

*Page-number appearing at foot of page of original certified Transcript of Record.

time, the First National Bank of Colville advanced the full purchase price of the automobiles in question and the mortgage was given for the purpose of securing the purchase price thereof.

On the 18th day of November, 1920, the mortgage was filed in the office of the Auditor of Stevens County, Washington, in which County the automobiles were kept.

The notary did not sign the affidavit of good faith. He did, however, attach his seal opposite the place where his signature should have been. The affidavit of good faith is followed on the instrument by the acknowledgment and the acknowledgment is in proper form, signed by the notary, and his seal placed thereon. Undisputed oral testimony was admitted over objection, that the mortgagor (the bankrupt herein) [2] swore to the affidavit of good faith.

The mortgage was a single sheet of paper with the blank form for the affidavit and acknowledgment on the back thereof.

The petition in bankruptcy was filed December 28th, 1920 and adjudication made January 14th, 1921, and J. F. Herrick qualified as Trustee January 29th, 1921, and is now the Trustee of said estate.

The sole question involved is, whether or not the mortgage is valid as against the Trustee in Bankruptcy.

The foregoing stipulation and agreed statement signed and dated at Spokane, Washington, this 19th day of January, A. D. 1922.

(Signed) FABIAN B. DODDS,
Attorney for Trustee.
L. B. DONLEY,
Attorney for First National Bank of Colville.
ALLEN, WINSTON & ALLEN,
Attorneys for First National Bank of Colville.

Approved:

(Signed) FRANK H. RUDKIN,
District Judge.

[Endorsements]: Stipulation and Agreed Statement. Filed in the U. S. District Court for the Eastern District of Washington. January 19, 1922. W. H. Hare, Clerk. By A. P. Rumburg, Deputy. [3]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Memorandum.

Messrs. L. B. DONLEY and ALLEN, WINSTON & ALLEN, Attorneys for the First National Bank of Colville.

Messrs. DODDS & DODDS, Attorneys for the Trustee.

Upon a petition of the Trustee, The First Na-

tional Bank of Colville, Washington, has been ordered to show cause why a chattel mortgage on two Elcar automobiles for the sum of $3617.50 given to it by the bankrupt, October 17th, 1920, should not be adjudged void because it contains no jurat to the affidavit of good faith, and why the two automobiles mentioned in the mortgage should not be turned over to the Trustee, free of any lien of said mortgage.

I find the facts to be as follows:

The bankrupt bought the above-mentioned automobiles from the Hoffman-Bacon-McBroon Company of Spokane. The First National Bank of Colville advanced the purchase price thereof to the Hoffman-Bacon-McBroom Company, and took from the bankrupt a chattel mortgage, the one in question. The mortgage is properly executed and acknowledged and was filed in the office of the Auditor of Stevens County, Washington, on November 18th, 1920. The affidavit of good faith is properly worded and is signed by the mortgagor. The Notary Public before whom the instrument was acknowledged has affixed his seal to the jurat of the affidavit of good faith, but has not signed his name thereto. He testified that the mortgagor actually swore to the affidavit and there is no testimony to the contrary. Shortly after the execution of the mortgage, the bankrupt [4] was given possession of the cars by the vendor, and drove them to Marcus, Washington. On December 9th or 10th, 1920, the bankrupt made an assignment to one John Holenbeck, for the benefit of his creditors, of all the stock of cars, acces-

sories, machinery, sundries, tools, supplies, and equipment contained in his garage. The cars covered by the chattel mortgage were in the garage at the time. It appears that the assignment was not delivered until a few days later. On the day of the execution of the assignment, the Bank's president instructed Hollenbeck to take possession of the cars for the Bank. Hollenbeck testified that he did take possession of the cars for the Bank, put storage tags on them, upon which was written the date and the name, First National Bank. That the tags remained on the cars until they were removed by the Bank, on December 28th, 1920, and that the Bank then paid storage on them.

On December 28th, 1920, Mr. Dodds, representing the creditors, called on Mr. Waddell, president of the Bank, and told him that the creditors would not recognize the mortgage. Mr. Dodds returned to Spokane that day and after six o'clock P. M. filed a petition to have Jessee adjudged bankrupt. About 5:15 P. M. of that day, the Bank had taken actual physical possession of the cars.

The Bank has consented that the questions at issue be decided by this Court on summary proceedings, regardless of whether it actually has jurisdiction to decide them.

The first question to be decided is whether the failure of the Notary Public to sign his name to the jurat of the affidavit of good faith renders the mortgage void as to the Trustee, even though it is shown by extrinsic evidence that the mortgagor in fact swore to the affidavit before the notary.

The statutes of our state pertinent to the question are the following: [5]

Section 3660 of Remington & Ballinger's Codes, as amended in 1915, reading as follows:

> "Affidavit of Good Faith—Acknowledgment —Recording. A mortgage of personal property is void as against all creditors of the mortgagor, both existing and subsequent, whether or not they have or claim a lien upon such property, and against all subsequent purchasers, pledgees, and mortgagees and encumbrancers for value in good faith unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and unless it is acknowledged and filed within ten days from the time of the execution thereof in the office of the county auditor of the county in which the mortgaged property is situated as provided by law."

Section 8298 of Remington's Codes and Statutes of Washington, which authorized Notaries Public to take affidavits and administer oaths.

Section 8299, which reads:

> "Signature—Seal Need not be Affixed, When. It shall not be necessary for a notary public, in certifying an oath to be used in any of the courts in this state, to append an impression of his official seal, but in all other cases when the notary public shall sign any instrument officially, he shall, in addition to his name and the

words 'notary public,' add his place of residence and affix his official seal."

Unless the statutes require that the jurat to the affidavit of good faith accompanying a chattel mortgage be signed by the notary public who administered the mortgagor's oath, there seems to be no doubt that an affidavit lacking the notary's signature, provided it was actually sworn to by the mortgagor before the notary, is sufficient.

Section 3660, mentioned above, reads:

"Unless it is accompanied by the affidavit of the mortgagor * * * ."

This language, it seems to me, requires that the affidavit of good faith be complete in so far as not to require an interested party to search further than the record itself for proof that the required oath was duly taken.

This view is further supported by Section 8299, above quoted, which, although it does not explicitly state an affidavit shall be signed by the notary public, appears to infer that his signature is required. It does require that in all [6] cases, except the certificates to oaths to be used in any of the courts of the state, that a notary public shall, when he shall sign any instrument, officially, affix his seal, in addition to his name. It is argued by counsel for the bank that the words: "When he shall sign other instruments, officially, he shall affix his official seal," infers that it is not necessary for the notary to sign, and simply require that when he does sign, he shall affix his seal. If this contention is sound, an affidavit is good which lacks both the signature and

seal of the notary public. While this construction of the language of the statute is possible, it is so inconsistent with the other requirements of the section that I am sure it was not intended.

While the exact question under consideration has never been passed upon by our Supreme Court, the Court has, in the case of Stetson & Post Mill Company vs. McDonald, 5 Wash. 496, rendered a decision which throws some light upon it. In this case, it was held that when the seal of a notary was not attached to the jurat of a notice of lien, the notice was invalid and that extrinsic proof could not be received that the notice had in fact been sworn to, for the purpose of curing the omission of a notary to affix his seal. In answer to the argument that such proof should be received, the Court said:

> "These notices are required to be recorded or filed for record and the notice being invalid when filed, subsequent proof could not be made as to any material fact omitted, to render the notice valid and make it relate back to the time it was filed for record."

See also: Gates vs. Brown, 1 Wash. 474.

These two cases construe section 8299. It will be noticed that the requirements as to the formality of the jurat of a lien notice are no different than those of the affidavit of good faith accompanying a chattel mortgage.

It is contended by counsel for the Bank that the case of Woods vs. Young Lumber Company, 107 Wash. 432, decides the question. [7] In this case,

the notary signed the certificate of acknowledgment and jurat to the affidavit of good faith, but affixed his seal only to the acknowledgment. It was held that there being no statute to prevent the notary evidencing the two acts by one certificate, under the circumstances, he may be considered as having done so, in so far as the affixing of his official seal is concerned. The reason upon which the Court based its decision is stated in the following language:

> "I adopt this conclusion the more readily because the objection is merely formal, the certificate in its present form furnishing all the security against error and imposing upon the notary all the responsibility which it could do if another seal were added."

It is inconceivable to me that the Court could say in the case under consideration:

> "The certificate in its present form furnishes all the security against error and imposes upon the notary all the responsibility which it could do if another signature were added."

As counsel for the Trustee says, any third person could put on a seal. The statement of the counsel for the Bank that any person could forge a signature, is also true, but few can do it so well as to defy detection.

It is my opinion that under the statutes, the affidavit of good faith required by section 3660 to be filed with a chattel mortgage must be complete in itself and that creditors who examine the records are not required to go outside of the record to ascer-

tain whether an affidavit of good faith, the jurat of which does not contain the notary's signature, was actually sworn to, even though the jurat bears the notary's seal.

If the defective affidavit of good faith makes the mortgage invalid as to the Trustee, the Bank contends that its taking possession of the mortgaged property before the petition in bankruptcy was filed, cured the defect.

Without deciding whether or not the Bank did take possession of the mortgaged property before the petition in bankruptcy [8] was filed, but assuming that it did, I decide that such taking possession did not make the mortgage valid and effective as to the Trustee.

In the case of Watson vs. First National Bank, 82 Wash. 65, it is held that where a chattel mortgage is invalid as to creditors, for lack of an affidavit of good faith and because of failure to record it, it is nevertheless valid as between the parties and becomes effective as to a subsequent general creditor when, with the consent of the mortgagor, the mortgagee took possession of the property before such creditor acquired a specific lien upon the property.

This was the law prior to the amendment of section 3660 in 1915. By the plain terms of the amended section quoted above, a chattel mortgage not accompanied by an affidavit of good faith is void as to all creditors of the mortgagor, both existing and subsequent, whether or not they have or claim a lien upon the mortgaged property. The mortgage of The First National Bank of Colville

was therefore void as to the bankrupt's creditors and void as to the trustee who succeeded to their rights.

An order wil be made declaring said mortgage void as to the Trustee and directing The First National Bank of Colville to turn over the said automobiles or the proceeds thereof to the Trustee.

Respectfully submitted,

(Signed) SIDNEY H. WENTWORTH,
Referee in Bankruptcy.

[Endorsements]: Referee's Certificate on Review. Filed in the U. S. District Court for the Eastern District of Washington, September 21, 1921. W. H. Hare, Clerk. By E. M. Hardin, Deputy. [9]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Memorandum.

ALLEN, WINSTON & ALLEN and L. B. DONLEY, Attorneys for the Mortgagee.

F. B. DODDS, Attorney for the Trustee in Bankruptcy.

RUDKIN, District Judge.

This is a proceeding to review an order of the referee adjudging a chattel mortgage invalid be-

cause the jurat to the affidavit of good faith was not signed by the notary. The instrument is in all respects regular in form; the affidavit of good faith was signed by the mortgagor, the seal of the notary was affixed to the jurat containing the name of the notary and the expiration of his commission, and the certificate of acknowledgment was signed by the notary and his official seal affixed. The question presented depends upon the construction of the statutes of the state. Section 3660, Rem. & Bal. Codes, provides:

> "A mortgage of personal property is void as against all creditors of the mortgagor, both existing and subsequent, whether or not they have or claim a lien upon such property, and against all subsequent purchasers, pledgees, and mortgagees and encumbrancers for value in good faith, unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and unless it is acknowledged and filed within ten days from the time of the execution thereof in the office of the county auditor of the county in which the mortgaged property is situated as provided by law."

Section 8298 provides:

> "It shall not be necessary for a notary public, in certifying an oath to be used in any of the courts in this state to append an impression of his official seal, but in all other cases when the notary public shall sign any instrument officially he shall, in addition to his name and the

words 'notary public,' add his place of residence and affix his official seal."

Inasmuch as the oath to the affidavit of good faith is [10] not to be used in any of the courts in this state, the official seal of the notary is an essential part of the oath. In Woods vs. Young Lumber Co., 107 Wash. 432, the jurat was signed by the notary but his official seal was not affixed. The seal was affixed, however, to the certificate of acknowledgment and in discussing the effect of the failure to affix the seal to the jurat the Supreme Court said:

> "It is plain that both the acknowledgment and the affidavit of good faith are necessary to a complete execution of the mortgage, except as between the mortgagor and mortgagee. These two acts are so intimately related to each other in their purpose that the evidencing thereof by the notary might well be done by the notary in one certificate, especially when the instrument is acknowledged and the affidavit made by the same person. Plainly there is nothing in the statute requiring him to evidence the two acts by two separate certificates. We are of the opinion that, in view of the concurrence of all the acts on the part of the mortgagor, mortgagee and the notary, the acknowledgment and affidavit of good faith being made by the same person in behalf of the lumber company, the two certificates of the notary may be considered as one act; and the attaching of the seal to the certificate of acknowledgment be also deemed an attaching of it to the jurat cer-

tifying to the president's subscribing and swearing to the affidavit in good faith."

The official seal is as essential to the affidavit of good faith as is the signature of the notary, but if the appending of one seal satisfies the requirements of law, both as to the affidavit and as to the certificate of acknowledgment, I fail to see why one signature is not equally efficacious. I admit the question is not entirely free from doubt, but it seems to me the doubt should be resolved in favor of the *bona fide* mortgagee. It is safe to say that no credit was extended to the mortgagor because of the omission complained of, and the question is rather a technical one, if compliance with the requirements of a statement can ever be said to be technical. Oral testimony tending to show that an oath was in fact administered was in my opinion incompetent, and whether the seal of the notary may be treated as his signature I will not discuss.

The order of the referee is reversed. [11]

[Endorsements]: Memorandum. Filed in the U. S. District Court for the Eastern District of Washington. October 31, 1921. W. H. Hare, Clerk. By Eva M. Hardin, Deputy. [12]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE L. JESSEE, Bankrupt.

Order Reversing Order of Referee and Declaring Mortgage Valid.

This cause having heretofore come on for hearing before Hon. Frank H. Rudkin, Judge of the above-entitled court, on the petition of The First National Bank of Colville, for a writ of review from the order of Sidney H. Wentworth, Esquire, Referee in Bankruptcy, adjudicating void a certain mortgage on two automobiles given by the bankrupt to The First National Bank of Colville, Washington, on November 17th, 1920, the mortgagee being represented by L. B. Donley and Allen, Winston & Allen, its attorneys, and the Trustee being represented by Messrs. Dodds & Dodds, his attorneys, and the Court having filed his opinion herein, it is by the Court

ORDERED, ADJUDGED and DECREED that the said order of the Referee be and the same is hereby reversed and the said mortgage of the bank be and the same is hereby declared to be valid.

Exception of Trustee allowed.

Dated at Spokane, Washington, this 19th day of January, 1922.

(Signed) FRANK H. RUDKIN,
District Judge.

O. K.

(Signed) L. B. DONLEY,
ALLEN, WINSTON & ALLEN,

[Endorsements]: Order. Filed in the U. S. District Court for the Eastern District of Washington.

January 19, 1922. W. H. Hare, Clerk. A. P. Rumburg, Deputy. [13]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Petition for Appeal.

RE: MORTGAGE FIRST NATIONAL BANK OF COLVILLE.

J. F. Herrick, Trustee of the Estate of George R. Jessee, Bankrupt, feeling himself aggrieved by the order of this Court, made and entered herein on the 19th day of January, 1922, does hereby appeal from the said order declaring and adjudging the said mortgage of The First National Bank of Colville to be valid as against the Trustee, and reversing the order of the Referee, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignments of error filed herein, and prays that this appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings, and papers upon which said order was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California.

Dated this 19th day of January, A. D. 1922.

(Signed) FABIAN B. DODDS,
Attorney for Trustee.

[Endorsements]: Petition for Appeal. Copy Received January 19, 1922. (Signed) L. B. Donley and Allen, Winston & Allen, Attorneys for Respondent. Filed in the U. S. District Court for the Eastern District of Washington. January 19, 1922. W. H. Hare, Clerk. By A. P. Rumburg, Deputy. [14]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Order Allowing Appeal.

RE: MORTGAGE FIRST NATIONAL BANK OF COLVILLE.

The foregoing petition of J. F. Herrick, Trustee of the Estate of the said George R. Jessee, Bankrupt, for an appeal from that certain order made and entered in the above-entitled proceeding in bankruptcy on the 19th day of January, 1922, to the United States Circuit Court of Appeals for the Ninth Circuit, is hereby granted and allowed and this appeal being by a trustee in bankruptcy, no bond need be filed.

(Signed) FRANK H. RUDKIN,
District Judge.

[Endorsements]: Order Allowing Appeal. Received Copy January 19, 1922. (Signed) L. B. Donley and Allen, Winston & Allen, Attorneys for Respondent. Filed in the U. S. District Court for the Eastern District of Washington. January 19, 1922. W. H. Hare, Clerk. By A. P. Rumburg, Deputy. [15]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Assignments of Error.

Comes now J. F. Herrick, Trustee of the Estate of George R. Jessee, Bankrupt, and says that in the order made and entered in the above-entitled proceedings, on the 19th day of January, 1922, there is manifest error and files the following assignments of error committed and happening in the said proceedings, upon which he will rely in his appeal from said order:

I.

In reversing the order of the referee made and entered adjudging the mortgage of The First National Bank of Colville void as against the Trustee.

II.

In refusing to affirm the order of the Referee made and entered adjudging the mortgage of The

First National Bank of Colville to be void as against the Trustee.

III.

In adjudging the chattel mortgage to The First National Bank of Colville to be valid as against the Trustee.

IV.

In failing to adjudge the chattel mortgage of The First National Bank of Colville void as against the Trustee.

V.

In reversing the order of the Referee ordering the return of the property covered by said chattel mortgage, or the proceeds thereof, to the Trustee. [16]

VI.

In failing to affirm the order of the Referee, ordering the return of the property covered by said chattel mortgage to the Trustee.

VII.

In denying that the Trustee is entitled to the property covered by said chattel mortgage, free and clear from the lien thereof.

(Signed) FABIAN B. DODDS,
Attorney for Trustee.

[Endorsements]: Assignments of Error. Due service of within assignments of error acknowledged this 19th day of January, 1922. (Signed) L. B. Donley and Allen, Winston & Allen, Attorneys for First National Bank of Colville. Filed in the U. S. District Court for the Eastern Dis-

trict of Washington. January 19, 1922. W. H. Hare, Clerk. By A. P. Rumburg, Deputy. [17]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Citation on Appeal (Copy).

United States of America,—ss.

The President of the United States to the First National Bank of Colville, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 18th day of February, 1922, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, for the Eastern District of Washington, in the Matter of George R. Jessee, Bankrupt, wherein J. F. Herrick, as Trustee of the Estate of George R. Jessee, Bankrupt, is appellant, and the First National Bank of Colville is the appellee, to show cause, if any there be, why the order of the District Judge entered the 19th day of January, 1922, adjudging the chattel mortgage of the First National Bank of Colville to be valid, and reversing the Referee, should

not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. WILLIAM H. TAFT, Chief Justice of the United States, this 19th day of January, in the year of our Lord, 1922.

(Signed) FRANK H. RUDKIN,
District Judge.

[Seal] Attest: (Signed) W. H. HARE,
Clerk.
By A. P. Rumburg,
Deputy. [18]

[Endorsements]: Citation on Appeal (Lodged Copy). Due service of the within citation on appeal admitted this 19th day of January, 1922. (Signed) L. B. Donley and Allen, Winston & Allen, Attorneys for Colville Bank. Filed in the U. S. District Court for the Eastern District of Washington. January 19, 1922. W. H. Hare, Clerk. By A. P Rumburg, Deputy. [19]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532—IN BANKRUPTCY.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Praecipe for Transcript of Record.

To the Clerk of the United States Circuit Court for the Eastern District of Washington, Northern Division:

YOU ARE HEREBY REQUESTED, in preparing your return to the citation on appeal in the above-entitled cause, to include therein the following:

1. Stipulation in the case.
2. Memorandum of opinion of the Referee.
3. Memorandum of opinion of the District Judge.
4. Order of the District Judge reserving the order of the Referee and declaring the mortgage of the First National Bank of Colville to be valid as against the Trustee, this being the order appealed from.
5. Petition for appeal.
6. Order allowing appeal.
7. Assignments of error.
8. Citation.
9. Praecipe for transcript of record.

which comprises all of the papers, records and other proceedings which are necessary to the hearing of the appeal in said matter in the United States Circuit Court of Appeals for the Ninth Circuit, and that no other papers, records, or other proceedings than those above mentioned are necessary to be included by the Clerk of said Court, in making up his return to said citation as a part of such record. [20]

Dated this 19th day of January, 1922.

(Signed) FABIAN B. DODDS,
Attorney for Trustee.
L. B. DONLEY,
ALLEN, WINSTON & ALLEN,
Attorneys for First National Bank of Colville.

[Endorsements]: Praecipe for Transcript of Record. Filed in the U. S. District Court for the Eastern District of Washington, January 19, 1922. W. H. Hare, Clerk. By A. P. Rumburg, Deputy. [21]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3532.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Alan G. Paine, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing pages from 1 to 21 inclusive, to be a full, true, correct and complete copy of the record, pleadings, testimony and all proceedings had in said action as called for by J. F. Herrick, Trustee of the Estate of George R. Jessee, appellant, and First National Bank of Colville, appellee, in their praecipes for a transcript of the record herein, as the same remain of

record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the order, of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

I further certify that the cost of preparing, certifying and printing the foregoing transcript is the sum of Nine Dollars and Thirty-five Cents ($9.35), and that the same has been paid to me by Fabian B. Dodds, Solicitor for J. F. Herrick, as trustee, and appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at the city of Spokane, [22] in said Eastern District of Washington, Northern Division, in the Ninth Judicial Circuit, this 13th day of February, A. D. 1922, and the Independence of the United States of America, the one hundred and forty-sixth.

[Seal] ALAN G. PAINE,
Clerk. [23]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3532.

In the Matter of GEORGE R. JESSEE, Bankrupt.

Citation on Appeal (Original).

The United States of America,—ss.

The President of the United States to the First National Bank of Colville, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 18th day of February, 1922, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, for the Eastern District of Washington, in the matter of George R. Jessee, Bankrupt, wherein J. F. Herrick, as Trustee of the Estate of George R. Jessee, Bankrupt, is appellant, and the First National Bank of Colville is the appellee, to show cause, if any there be, why the order of the District Judge entered the 19th day of January, 1922, adjudging the chattel mortgage of the First National Bank of Colville to be valid, and reversing the Referee, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the HON. WILLIAM H. TAFT, Chief Justice of the United States, this 19th day

of January, in the year of our Lord, 1922.

FRANK H. RUDKIN,
District Judge.

[Seal] Attest W. H. HARE,
Clerk.
By A. P. Rumburg,
Deputy. [24]

[Endorsed]: No. 3532. In the District Court of the United States for the Eastern District of Washington, Northern Division. In the Matter of George R. Jessee, Bankrupt. Citation on Appeal. Lodged in the U. S. District Court, Eastern Dist. of Washington. Jan. 19, 1922. Wm. H. Hare, Clerk. A. P. Rumburg, Deputy.

Due service of the within Citation on Appeal admitted this 19th day of January, 1922.

L. B. DONLEY,
ALLEN, WINSTON & ALLEN,
Attorneys for Colville Bank. [25]

[Endorsed]: No. 3830. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of George R. Jessee, Bankrupt. J. F. Herrick, as Trustee of the Estate of George R. Jessee, Bankrupt, Appellant, vs. First National Bank of Colville, Washington, a Corporation, Appellee. Transcript of Record. Upon Appeal from the

United States District Court for the Eastern District of Washington, Northern Division.

Filed February 16, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuil.

By Paul P. O'Brien,

Deputy Clerk.